

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

November 12, 2010

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Hawaii

Consent to Sublease General Lease No. S-5700, George Y. and Suzuko Tamashiro, Lessee, to Donovan Doag, dba West Tech Auto & Hydraulic, Hawaiian Roll-off Services, LLC, Phoenix V LLC, dba BEI Hawaii, Island Equipment, Inc., dba American Machinery, D & M Hydraulics Sales, Brian Kelly, dba Kelly's Tree Service, Dennis Florer, dba Kona Machine and Service, Nixon Y. Arakaki, dba Honaunau Auto Center, Environmental Services, Inc., Atlas Recycling Centers, LLC, Sub lessees, Kealakehe, South Kona, Hawaii, Tax Map Key: 3<sup>rd</sup>/7-4-20:18 & 20.

**APPLICANT:**

George Y. and Suzuko Tamashiro, as Sublessor, to:

1. Donovan Doag, dba West Tech Auto & Hydraulic
2. Hawaiian Roll-off Services, LLC
3. Phoenix V LLC, dba BEI Hawaii
4. Island Equipment Inc., dba American Machinery
5. D & M Hydraulic Services, Inc.
6. Brian Kelly, dba Kelly's Tree Service
7. Dennis Florer, dba Kona Machine and Service
8. Nixon Y. Arakaki, dba Honaunau Auto Center
9. Environmental Services, Inc.
10. Atlas Recycling Centers, LLC

As Sub-lessees.

**LEGAL REFERENCE:**

Section 171-36(a)(6), Hawaii Revised Statutes, as amended.

"Revision to Sublease Rent Participation Policy" adopted by the Board of Land and Natural Resources (Board) on May 26, 2000, agenda item D-24, and as amended by "Resubmittal: Amendment to the Sublease Rent Participation Policy" approved by the Board on January 26, 2001, under agenda item D-8.

**LOCATION AND AREA:**

Portion of Government lands situated at Kealahou, North Kona, Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/7-4-20:18 & 20, consisting of approximately 4.015 acres more or less as shown on the attached map labeled Exhibit A.

**TRUST LAND STATUS:**

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

**LEASE CHARACTER OF USE:**

Industrial, commercial and transportation purposes.

**SUBLEASE CHARACTER OF USE:**

1. Donovan Doag, dba West Tech Auto & Hydraulic	Outside yard area.
2. Hawaiian Roll-off Services, LLC	Office and warehouse space.
3. Phoenix V LLC, dba BEI Hawaii	Office and warehouse space.
4. Island Equipment, Inc., dba American Machinery	Office and warehouse space.
5. D & M Hydraulics Sales and Service, Inc.	Office and warehouse space.
6. Brian Kelly, dba Kelly's Tree Service	Outside yard area.
7. Dennis Florer, dba Kona Machine and Service,	Office and warehouse space.
8. Nixon Y. Arakaki, dba Honaunau Auto Center	Warehouse space.
9. Environmental Services, Inc.	Outside yard area.
10. Atlas Recycling Centers, LLC	Outside yard area.

**TERM OF LEASE:**

55 years, commencing on February 16, 1972 and expiring on February 15, 2027. Last rental reopening occurred on February 16, 2007; next rental reopening is scheduled for February 16, 2017.

**TERM OF SUBLEASE:**

	<b><u>Begin Date</u></b>	<b><u>End Date</u></b>
1. Donovan Doag, dba West Tech Auto & Hydraulic	09/01/10	05/31/11
2. Hawaiian Roll-off Services, LLC	09/01/10	05/31/11
3. Phoenix V LLC, dba BEI Hawaii	03/01/10	02/28/13
4. Island Equipment, Inc., dba American Machinery	07/01/10	06/30/15
5. D & M Hydraulics Sales and Service, Inc.	03/01/10	02/28/13
6. Brian Kelly, dba Kelly's Tree Service	08/01/10	07/31/13
7. Dennis Florer, dba Kona Machine and Service	03/01/10	02/28/13
8. Nixon Y. Arakaki, dba Honaunau Auto Center,	08/01/09	07/31/12
9. Environmental Services, Inc.	07/01/10	06/30/13
10. Atlas Recycling Centers, LLC	01/01/10	12/31/12

**ANNUAL RENTAL:**

\$160,000.00.

**ANNUAL SUBLEASE RENTAL:**

1. Donovan Doag, dba West Tech Auto & Hydraulic	\$5,400.00 Base rent
2. Hawaiian Roll-off Services, LLC	\$9,000.00 Base rent
3. Phoenix V LLC, dba BEI Hawaii	\$105,600.00 1 <sup>st</sup> year 105,600.00 2 <sup>nd</sup> year 105,600.00 3 <sup>rd</sup> year
4. Island Equipment, Inc., dba American Machinery	\$56,250.00 1 <sup>st</sup> year 56,250.00 2 <sup>nd</sup> year 56,250.00 3 <sup>rd</sup> year 57,937.56 4 <sup>th</sup> year 59,675.76 5 <sup>th</sup> year
5. D & M Hydraulics Sales	\$32,490.00 1 <sup>st</sup> year 32,490.00 2 <sup>nd</sup> year 32,490.00 3 <sup>rd</sup> year
6. Brian Kelly, dba Kelly's Tree Service	\$7,581.60 1 <sup>st</sup> year 8,845.20 2 <sup>nd</sup> year 9,287.52 3 <sup>rd</sup> year
7. Dennis Florer, dba Kona Machine and Service	\$4,329.00 1 <sup>st</sup> year 4,329.00 2 <sup>nd</sup> year 4,329.50 3 <sup>rd</sup> year
8. Nixon Y. Arakaki, dba Honaunau, Auto Center	\$11,700.00 1 <sup>st</sup> year 11,700.00 2 <sup>nd</sup> year 11,700.00 3 <sup>rd</sup> year
9. Environmental Services, Inc.	\$8,400.00 1 <sup>st</sup> year 8,400.00 2 <sup>nd</sup> year 8,400.00 3 <sup>rd</sup> year
10. Atlas Recycling Centers, LLC	\$14,400.00 1 <sup>st</sup> year 15,120.00 2 <sup>nd</sup> year 15,876.00 3 <sup>rd</sup> year

**RECOMMENDED ADJUSTMENT TO LEASE RENTAL:**

Not applicable as the subject lease does not have a provision allowing for sandwich profits.

**DCCA VERIFICATION:**

**SUBLESSOR:**

Sublessor is sole proprietorship and, as such, is not required to register with DCCA.

SUBLESSEE: Donovan Doag, dba West Tech Auto & Hydraulic

Sublessor is sole proprietorship and, as such, is not required to register with DCCA.

SUBLESSEE: Hawaiian Roll-off Services, LLC.

Place of business registration confirmed:	YES <u>X</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>X</u>	NO <u>  </u>
Good standing confirmed:	YES <u>  </u>	NO <u>X</u>

SUBLESSEE: Phoenix V LLC, dba BEI Hawaii

Place of business registration confirmed:	YES <u>X</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>X</u>	NO <u>  </u>
Good standing confirmed:	YES <u>X</u>	NO <u>  </u>

SUBLESSEE: Island Equipment, Inc., dba American Machinery

Place of business registration confirmed:	YES <u>X</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>X</u>	NO <u>  </u>
Good standing confirmed:	YES <u>X</u>	NO <u>  </u>

SUBLESSEE: D & M Hydraulics Sales

Place of business registration confirmed:	YES <u>X</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>X</u>	NO <u>  </u>
Good standing confirmed:	YES <u>X</u>	NO <u>  </u>

SUBLESSEE: Brian Kelly, dba Kelly's Tree Service

Sublessor is sole proprietorship and, as such, is not required to register with DCCA.  
Trade name is registered.

SUBLESSEE: Dennis Florer, dba Kona Machine and Service

Sublessor is sole proprietorship and, as such, is not required to register with DCCA.

SUBLESSEE: Nixon Y. Arakaki, dba Honaunau Auto Center

Sublessor is sole proprietorship and, as such, is not required to register with DCCA.

SUBLESSEE: Environmental Services, Inc.

Place of business registration confirmed:	YES <u>X</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>X</u>	NO <u>  </u>
Good standing confirmed:	YES <u>X</u>	NO <u>  </u>

SUBLESSEE: Atlas Recycling Centers, LLC

Place of business registration confirmed:	YES <u>X</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>X</u>	NO <u>  </u>
Good standing confirmed:	YES <u>X</u>	NO <u>  </u>

REMARKS:

Pursuant to the "Revision to Sublease Rent Participation Policy" adopted by the Board at its meeting of May 26, 2000, agenda item D-24, the Board authorized the Chairperson to consent to subleases where no sandwich profits exist in two situations: 1) the lease has no provision which allows for sandwich profits or 2) the sublease involves improved property and according to this policy, the State is not entitled to any sandwich profits.

Staff is requesting the Board consent to the various subleases under General Lease No.S-5700, as the subject general lease has significant improvements and is therefore not subject to the sandwich profits provision.

On March 30, 1964, American Factors (AMFAC) issued the Department of Transportation (DOT), Harbors Division, a 45-year sublease, for warehouse and marshalling purposes, in consideration for the removal of an existing warehouse on Kailua-Kona Wharf. By letter dated April 1, 1970, AMFAC notified DOT it was interested in upgrading the property subleased to DOT, which resulted in DOT having to again relocate its terminal freight shed.

At its meeting of July 9, 1970, the Board of Land and Natural Resources (BLNR), under agenda item F-4, approved a set aside to DOT, Harbors Division, for its freight terminal site, together with two (2) non-exclusive easements for access purposes (GEO No. 2565). The subject site consisted of 4.015 acres of State lands a Kealakehe, North Kona, Hawaii.

The BLNR, at its meeting of July 13, 1971, Item J-13, approved the issuance of a 55-year lease by public auction, with provisions to sublease back to the State upon completed construction of the terminal transit shed. Lease No. H-72-1 was issued to AMFAC as the sole and successful bidder at the upset at the upset price, for industrial, commercial and transportation purposes and uses accessory thereto as approved by the DOT. By sublease dated January 15, 1974 and running co-terminus with Lease No. H-72-1, AMFAC subleased 10,000 square feet of warehouse space back to the DOT as a provision of the lease.

Act 272, Session Laws of Hawaii 1991, authorized the Department of Land and Natural Resources (DLNR) as the agency responsible for the overseeing and administering the boating and coastal areas programs under the Division of Boating and Ocean Recreation (DOBOR). The DLNR is to provide for the orderly transition of the jurisdictional responsibilities for the boating and coastal areas program from the DOT to DOBOR. As a result of the act, the EO and the long term lease was transferred to DOBOR.

The DOT had requested the cancellation of GEO 2565 for the freight terminal site as the subject property no longer benefited the DOT or DOBOR as originally intended due to its distance from the nearest commercial harbor. As the property has been leased to AMFAC and subsequently assigned to a trucking company under a long-term lease, the property is obviously not being utilized for boating purposes.

At its meeting of March 2, 1983 under agenda item J-11, the Board consented to the assignment of lease from AMFAC, Inc. Assignor to AMFAC Property Development Corp., Assignee.

Again at its meeting of October 21, 1983 under agenda item J-22, the Board consented to the assignment of lease from Assignor to AMFAC Property Development Corp., Assignor to Richard Minoru Jitchaku and George Y. Tamashiro, Assignees.

Further at its meeting of March 31, 1987 under agenda item J-3, the Board consented to the assignment of lease from Richard Minoru Jitchaku and George Y. Tamashiro, Assignor, to George Y. and Suzuko Tamashiro, Assignee.

At its meeting of February 27, 2009, under agenda item D-8, the Board consented to a special installment agreement with the Lessee resulting from back rent in the amount of \$215,833.41.

The Lessee is compliant with all lease terms and conditions including rent, insurance and performance bond. The Lessee has not had a notice of default issued for any lease violation. Last rental reopening occurred on February 16, 2007; next rental reopening is scheduled for February 16, 2017. There are no outstanding rental reopening issues.

The sub-lessees will be occupying the existing structure on the premises. Any alterations to their respective units will be minor. However, subject lease is in conservation sub-zone "General" and the alterations may require approval from the Office of Conservation and Coastal Lands.

Staff is requesting an after-the-fact consent to sublease due to the multiple sub-lease agreements and the different start dates for each sub-lessee.

RECOMMENDATION:

That the Board consent to the sublease under General Lease No. S-3624 between George Y. and Suzuko Tamashiro, Sublessor, to Donovan Doag, dba West Tech Auto & Hydraulic, Hawaiian Roll-off Services, LLC, Phoenix V LLC, dba BEI Hawaii, Island Equipment, Inc., dba American Machinery, D & M Hydraulics Sales, Brian Kelly, dba Kelly's Tree Service, Dennis Florer, dba Kona Machine and Service, Nixon Y. Arakaki, dba Honaunau Auto Center, Environmental Services, Inc., Atlas Recycling Centers, LLC, Sub lessees, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:

1. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
\_\_\_\_\_  
Gordon C. Heit  
Land Agent 

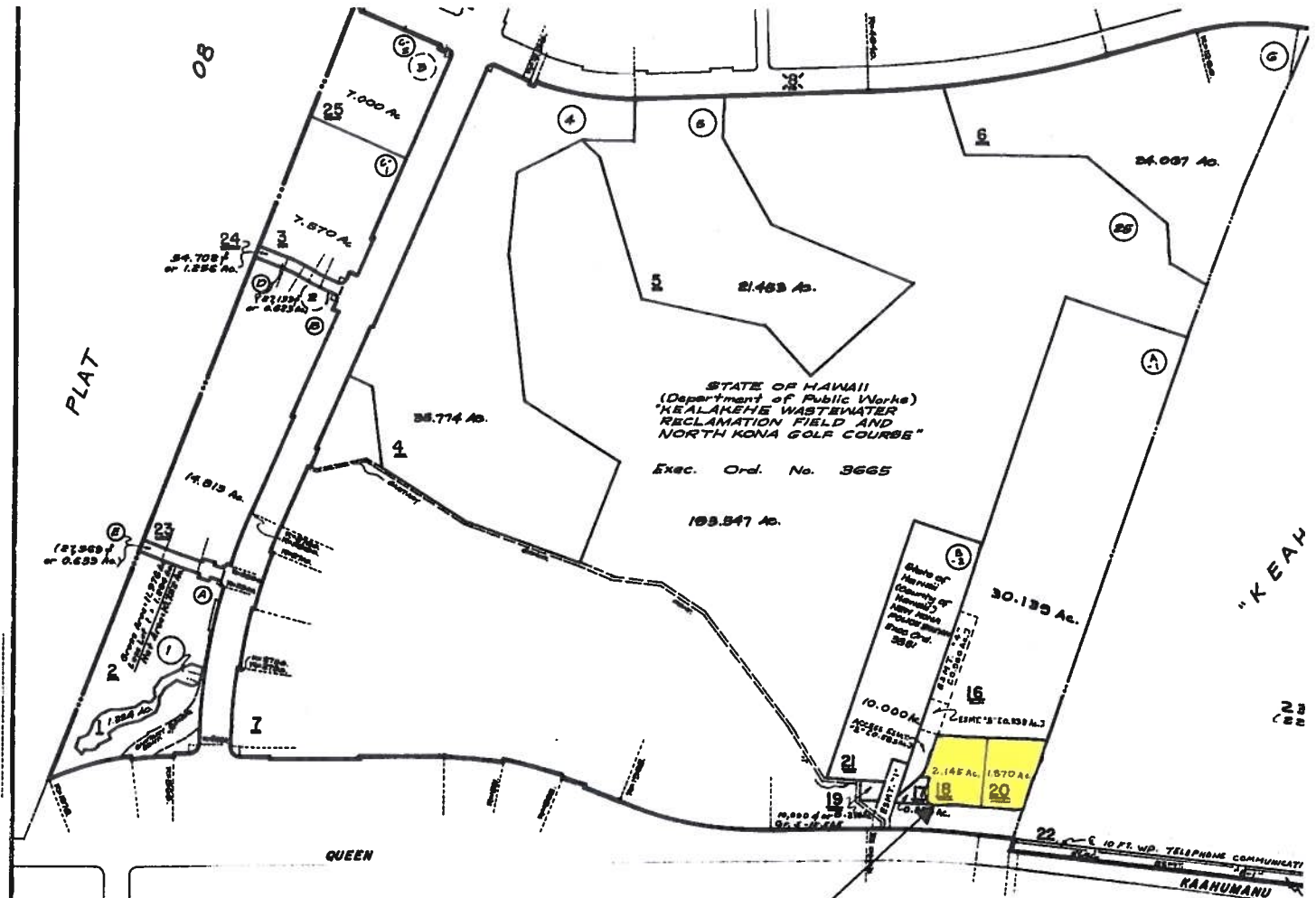
Approved for Submittal:

  
\_\_\_\_\_  
Laura H. Thieren, Chairperson



## EXHIBIT A

**TMK: 3<sup>RD</sup>/7-4-20:18 & 20**



**GL S-5700**

# GL S-5700



0 205 410 820 1,230 1,640  
Feet

